

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ST. PAUL FIRE & MARINE INSURANCE CO.  
a/s/o HUDSON STREET, LLC,

Docket No. 08-CV-00465 (BSJ)

Plaintiff,

**AFFIDAVIT**

- against -

ARCHITRON DESIGNERS AND BUILDERS, INC.,  
AYN ENTERPRISES INC., GJC STRUCTURES, P.E.,  
P.C. and JOSEPH EDWARD VANCE ARCHITECT,

Defendants.  
-----X

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NASSAU     )

DANIEL A. McFAUL, JR., an attorney duly admitted to practice law before the Courts of the State of New York and before this Court, hereby affirms the following to be true under the penalties of perjury:

1. I am an associate in the law firm of L'Abbate, Balkan, Colavita & Contini, L.L.P., attorneys of record for defendant Joseph Edward Vance Architect ("Vance"). I am fully familiar with the facts and circumstances regarding this matter.

2. This Affirmation is submitted in response to Architron Designers and Builders, Inc.'s ("Architron") motion for summary judgment.

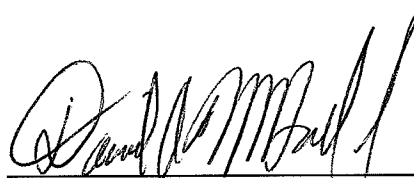
3. While Vance believes Architron is the party responsible for plaintiff's damages, it recognizes Architron's motion for summary judgment has a basis in the law cited by counsel. Essentially, Architron was given a Release from the plaintiff and wishes for summary judgment to be granted as well as the dismissal of all cross-claims for contribution and indemnification.

4. Vance has a similar situation as it was given a Release by plaintiff's subrogor, Hudson Street, LLC ("Hudson"), releasing Vance and settling all claims with Vance in the sum of Thirty Five Thousand (\$35,00.00) Dollars. There was no language in Vance's General Release preserving any subrogation rights and there was no limitation in the Release for any uninsured claims. Despite this Release, St. Paul Fire & Marine Insurance Company ("St. Paul") commenced the instant action against Vance.

5. Vance's motion was submitted to the Honorable Sandra J. Feuerstein of the Eastern District of New York on June 22, 2006. Annexed hereto as Exhibit "A" is Vance's Notice of Motion dated June 22, 2006. As you are aware, this case was transferred to the Southern District of New York and filed on January 18, 2008. We followed up with Justice Feuerstein by correspondence dated December 12, 2006, October 19, 2007 and most recently to Your Honor on May 27, 2008. Since it has been nearly two (2) years since the motion was submitted, we ask the Court to decide Vance's motion with Architron's motion. If the Court does not have all of the motion papers originally submitted in 2006 due to the transfer of the file to the Southern District of New York, please advise Vance's attorney of the best method to resubmit the documentation.

WHEREFORE, it is respectfully requested that the Court decide Vance's motion, simultaneously with Architron's motion, together with such other, further and different relief as this Court deems just and proper under the circumstances.

Dated: Garden City, New York  
June 3, 2008



DANIEL A. McFAUL, JR. (DAM 2855)

Sworn to before me this  
3<sup>rd</sup> day of June, 2008

  
Notary Public

JOYCE WEINSTEIN  
Notary Public, State Of New York  
No. 01WE4858553  
Qualified In Nassau County  
Commission Expires May 5, 20 10

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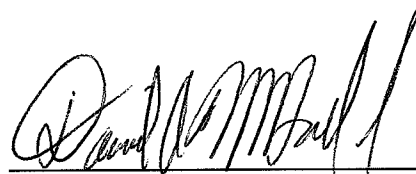
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